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July 16, 1999

Ms. Magalie Roman Salas  
 Secretary  
 Federal Communications Commission  
 445 12<sup>th</sup> Street, S.W.  
 Washington, D.C. 20554

NOTICE OF EX PARTE  
 PRESENTATION

RECEIVED  
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FEDERAL COMMUNICATIONS COMMISSION  
 OFFICE OF THE SECRETARY

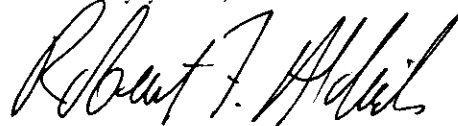
Re: CC Docket No. 98-141

Dear Ms. Salas:

On July 15, 1999, Cindy Schonhaut, Executive Vice President for Government and Corporate Affairs, ICG Communications, Inc., Karen Notsund, Sr. Director, Government Affairs, ICG Communications, Inc., and Albert Kramer of this law firm met with Robert Atkinson, Deputy Chief of the Common Carrier Bureau, and Jennifer Fabian, Thomas Krattenmacker, and Johanna Mikes of the Common Carrier Bureau staff. The subject of the meeting was ICG's concerns about the proposed conditions for the SBC/Ameritech merger. The attached documents, which were distributed at the meeting, summarize the facts and arguments presented at the meeting. Later in the day, Ms. Schonhaut, Ms. Notsund, and Robert Aldrich of this law firm met with Margaret Egler and Daniel Shiman of the Common Carrier Bureau staff to discuss ICG's concerns about the performance measures and incentives in the proposed merger conditions. The matters discussed are also summarized in the attached documents.

If you desire any further information, please contact the undersigned.

Sincerely yours,



Robert F. Aldrich

RFA/nw

cc: Robert Atkinson  
 Jennifer Fabian  
 Thomas Krattenmacker  
 Johanna Mikes  
 Margaret Egler  
 Daniel Shiman

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## **ICG'S CONCERNS REGARDING PROPOSED SBC/AMERITECH MERGER CONDITIONS**

### **◆ Promises mean little**

- More compliance needed prior to closing
- Deadlines should be shortened
- Penalties should be strengthened

### **◆ Conditions should raise the bar – not lower it**

- Highest state standard should be extended to all states
- Performance standards
  - stronger measures already agreed to in California
  - many additional measures already agreed to in California
  - simpler, more effective penalty structure proposed in California
  - Texas standards to be compared in comments

- OSS deadlines should be shortened

### **◆ Conditions should do more to promote facilities based competition**

- Enhanced extended links should be required

- ◆ **Most Favored Nation provisions should be strengthened**
  - **Out-of-region**
    - make performance measures for other ILECs' services to SBC/Ameritech publicly available
  - **In region**
    - apply MFN requirement to arbitrated provisions as well as voluntary provisions
    - apply MFN requirement on a more granular basis
- ◆ **Separate subsidiary requirements**
  - **Need more arm's length relationship between SBC/Ameritech's ILEC and CLEC operations**
    - inside region
    - outside region

## California Performance Measures

## FCC Merger Measures

**Bold** indicates that incentives apply to the performance submeasure

### Pre-Ordering

**Avg Response Time (to Pre-Order queries)**

Measures 15 and 17

### Ordering

**Avg FOC Notice Interval**

Similar to Measure 1 - Percent FOC Received Within "X" Hours

**Avg Reject Notice Interval**

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Percent of Flow Through Orders

Measure 16

### Provisioning

**Percent of Orders Jeopardized**

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**Avg Jeopardy Notice Interval**

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**Avg Completed Interval**

Measures 4a - 4c and Measure 6

Percent Completed Within Standard Interval

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**Coordinated Customer Conversion**

Measure 13

**Percent Number Portability Network Provisioning**

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**Percent of Due Dates Missed**

Measures 2a - 2c

Percent of Due Dates Missed Due to Lack of Facilities

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Delay Order Interval to Completion Date

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**Held Order Interval**

Measure 5a - 5c

**Provisioning Trouble Reports**

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**Percent Troubles in 30 days for new orders**

Similar to Measures 3a - 3c

**Avg Completion Notice Interval**

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### Maintenance

**Customer Trouble Report Rate**

Measures 11a - 11c and Measure 12

**Percent of Customer Trouble Not Resolved within Est Time**

Measures 8a and 8b, no measure for design circuits

**Avg Time to Restore**  
**POTS Out of service less than 24 hours**  
**Frequency of Repeat troubles in 30-day period**

Measure 10a - 10c  
Measure 10a  
Measures 9a - 9c

**Network Performance**

**Percent Blocking on Common Trunks**  
**Percent Blocking on Interconnection Trunks**  
**NXX Loaded by LERG Effective Date**  
**Network Outage Notification**

Measure 18  
Measure 17  
\*\*\*\*\*  
\*\*\*\*\*

**Billing**

**Usgae Timeliness**  
**Accuracy of Usage Feed**  
**Wholesale Bill Timeliness**  
**Usage Completeness**  
**Recurring Charge Completeness**  
**Non-Recurring Charge Completeness**  
**Bill Accuracy**  
**Duplicate Billing**  
**Accuracy of Mechanized Bill Feed**

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\*\*\*\*\*  
Measure 20  
\*\*\*\*\*  
\*\*\*\*\*  
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**Database Update Measurements**

**Avg Database Update Interval**  
**Percent Database Accuracy**  
**Emergency 911 Management System Database Update Interva**

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**Collocation**

**Avg Time to Respond to a Collocation Arrangement**  
**Avg Time to Provide a Collocation Arrangement**

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Similat to Measure 41

**Interface Measurements**

**Percent of Time Interface is Available**

**Avg Notification of Interface Outages**

**Center Responsiveness**

**Measure 14**

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## **Deficiencies in FCC Merger Performance Measures and Parity Conditions Relative to the California Proposed Conditions**

### **A. General Observations**

1. FCC has 24 fewer performance measures, many of which Pacific Bell has agreed to and has agreed to be subject to incentives
2. Many of the FCC performance measures have less rigorous requirements
  - a. no FOC standards for Interconnection trunks
  - b. FOC intervals mainly range from 24 to 48 hours, while California's are 12 hours for manual interfaces, 5 hours for electronically sent but manually handled and 10 MINUTES for electronic interfaces
  - c. Excludes company delayed orders due to "lack of facilities" from the Average Delay Days for SBC Caused Missed Due Dates (# 5a).
  - d. No measurement of average delay days for Interconnection trunks
  - e. Allows 3% of interconnection trunk groups to be blocked compared to 2% in California
  - f. Requires only 95% compliance with collocation tariff provisioning intervals rather than 100% as required in California
  - g. Allows for a study period for a pre-determined week to measure blockage on interconnection and common trunks rather than continuous monitoring with exception reporting.
3. Uses benchmarks rather than retail analogs
  - a. Percent Installations Completed (#4c)
  - b. Local Number Portability (#13)
  - c. OSS Interface Availability (#14) – for the systems both ILECs and CLECs use
  - d. Average Response Time for OSS Pre-Order Interface (#15) – for legacy systems

9. In Attachment A, paragraph 11, in states where a liquidated damages plan has not been adopted, SBC is to offer to include the Tier I structure in an interconnection agreement with any CLEC. However, it is conditioned upon the CLEC and SBC mutually agreeing that "any liquidated damages paid under the Tier I system will not be considered as an admission against interest or an admission of liability in any legal, regulatory or other proceeding relating to the same performance." Ameritech is seeking to have the FCC bind CLECs on what can be in their interconnection agreements.



# CLEC INCENTIVE PROPOSAL

GTEC Technical Workshop

California Public Utilities Commission

July 13, 1999

# CLEC GUIDING PRINCIPLES

- The incentive must be great enough to cause GTEC to meet its parity obligations.
- The incentive must be self-executing and applied without undue delay or additional litigation.
- Incentives should escalate with repeated or poor performance.
- The incentive structure must be fairly simple to implement and monitor.
- There should be minimal opportunity to game the system.

# Components of An Incentive Plan

- Identify performance submeasures to which incentives will apply
  - parity submeasures
  - benchmarks
- Establish incentive structure and amounts
- Define statistical test to be used
- Determine critical values
- Establish sample size requirements
- Non-Reporting Consequences

# CLEC INCENTIVE PLAN

- Incentives Must Apply To All Performance Submeasures For Which No Correlation Has Been Proven
- CLECs and Pacific Bell Agreed to A List of Approximately 1,000 Submeasures To Which Incentives Will Apply
- The Same List of Submeasures Should Apply to GTEC

# CLEC INCENTIVE PLAN

- CLECs and GTEC Agree On Use of Modified Z Statistic For Parity Submeasures During The Interim Period
- Benchmarks Should Have No Statistical Test; Each is Passed or Failed According To Its Individual Standard

# CLEC INCENTIVE STRUCTURE

- Tier I Violations: discriminatory performance provided to individual CLECs
- Tier II Violations: discriminatory performance provided to CLEC industry

# CLEC Incentive Structure

## Level of Violation Critical Values

- Basic Violation:  $1.04 \leq \text{modified } Z \leq 1.65$
- Intermediate:  $1.65 < \text{modified } Z \leq 3.00$
- Severe:  $\text{Modified } Z > 3.00$
- Chronic: Any level of violation occurring for 3 or more consecutive months

# CLEC INCENTIVE STRUCTURE

## TIER I - Parity Submeasures

<b>Level of Violation</b>	<b>Monthly Incentive For One Violation (per submeasure, per CLEC)</b>
Basic	\$2,500
Intermediate	\$5,000
Severe	\$25,000
Chronic	\$25,000



# CLEC INCENTIVE STRUCTURE

## TIER I - Benchmarks

<b>If Benchmark is missed, number of occurrences missing the benchmark (per submeasure)</b>	<b>Monthly Incentive For One Violation (per submeasure, per CLEC)</b>
One or more occurrence, but fewer than 10% of the occurrences	\$5,000
10 Percent or more of the occurrences	\$25,000
Chronic Violation (any number of occurrences)	\$25,000

# CLEC INCENTIVE STRUCTURE

## Tier II

- Incentives triggered if number of violations, based on aggregate CLEC data, exceeds the threshold
- Threshold based on a conservative Type I error rate of 5 percent.
- Each violation imposes a payment of \$.25 per GTEC access line

# MITIGATION MEASURES

## Forgiveness Plan For Tier I Violations

- Forgivenesses only apply to parity submeasures
- One forgiveness granted per submeasure every 6 months
- No more than 2 forgivenesses can be accrued per submeasure
- Forgivenesses can only be used for the submeasure for which it was granted
- Forgivenesses must be used at first opportunity, except not in consecutive months nor for severe violations

# MITIGATION MEASURES

## Continued

- Limited Root Cause Analysis
- Procedural Cap
- Use of standard deviation of 1.04 rather than strict parity requirement of 0

# RANDOM VARIATION MITIGATION

- GTEC Proposes Two Ways to Mitigate Random Variation
  - Increases difference between basic and severe penalties
  - Lower payments made for basic violation
  - CLEC Proposal Employs Both Methods

# Limited Root Cause Analysis

- Burden of proof on GTEC
- Limited to list of excludable events
- Force Majeure conditions excludable
- Inaccurate forecast may trigger root cause analysis
- Disputed amounts paid into escrow

# CLEC INCENTIVE PLAN

## Sample Size

- Minimum Sample Size of 5 for Parity Submeasures
- Permutation Analysis for Sample Sizes Between 5 and 20
- No Minimum Sample Size For Collocation, NXX Loaded by LERG Effective Date and Wholesale Bill Timeliness

# CLEC INCENTIVE PLAN

## Sample Size - Benchmarks

- For Benchmarks That Use Percentages, A Table That Scales the Percentages According to the Sample Size Should Be Used



# Forecasting

- CLECs submit forecasts by product/service covering six month prospective period
- Interconnection and Collocation forecasts by wire center
- Statewide service request forecasts
- Forecasting begins after Commission decision on incentives implemented

# COMMENCEMENT OF INCENTIVES

- Incentives Should Apply One Month After Adoption of a Decision
- GTEC Attempts to Delay Implementation Through an Inappropriate Use of an Interim Period and Other Caveats